

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own
motion as to the propriety of the rates and
charges set forth in the tariff filings by
Verizon – New England, Inc.,
d/b/a Verizon – Massachusetts

DTE 98-57, Phase III

AT&T'S REPLY COMMENTS REGARDING THE NEED FOR
THE DEPARTMENT TO MOVE EXPEDITIOUSLY TO ENSURE THAT
CLECS ARE GIVEN EFFICIENT ACCESS TO FIBER-FED LOOPS

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I. IT IS IMPORTANT THAT THE DEPARTMENT ACT NOW TO ENSURE THAT CLECs ARE GIVEN EFFICIENT ACCESS TO FIBER-FED LOOPS.

Verizon has announced that it will begin the first office application of its “PARTS-like” technology in the “latter half” of 2002. *See Verizon’s Letter dated March 7, 2002*, filed in Docket DTE 98-57-III. Thus, Verizon is presently ready to begin introducing a Next Generation Digital Loop Carrier (“NGDLC”) architecture. As the Department has previously found, it is important that issues of CLEC interconnection to fiber-fed loops be resolved *before* Verizon is able to utilize new technologies to improve its own retail services and gain an unfair competitive advantage. *See Phase III Order*, D.T.E. 98-57, September 29, 2000, at 86, 87.

Almost two years ago, the Department ordered Verizon to file an illustrative tariff providing for the unbundling of packetized signals at the Remote Terminal. *See Phase III Order*, D.T.E. 98-57, September 29, 2000, at 86, 87. At that time, Verizon stated that the deployment of an NGDLC architecture able to support the unbundling of packetized signals was not feasible and that it was uncertain when such an architecture could be deployed. *See id.* at 88-89. Nonetheless, the Department found the filing of an “illustrative tariff” necessary to prevent Verizon from gaining an upper hand on competitors by first deploying such an architecture to serve its own retail customers and only then filing a tariff permitting access by CLECs to such equipment. *See id.*

That concern is even more acute today. Verizon should not be allowed to begin testing and implementing an NGDLC architecture while ignoring critical questions of how CLECs will be able to access to fiber-fed loops. The Department must move forward with this proceeding to prevent Verizon from gaining such an unfair competitive advantage.

As stated in AT&T’s Initial Comments, proceeding now is critical given the possibility that Verizon could configure its network in a way that could impede CLEC ability to efficiently provide voice and data services for years to come. *See AT&T’s Initial Comments* at 13. Thus, it

is critically important that the job is done right the first time, and that CLECs be allowed access to a unified loop including voice and data signals at the OCD.

Even under the assumption that the D.C. Circuit's *U.S. Telecom* decision creates some "regulatory uncertainty", which it does not, that would not be grounds for delaying resolution of the issues raised by Verizon's March 7 announcement. The Department has previously recognized the need to move forward with the promotion of local competition in the face of regulatory uncertainty. For example, in Docket 01-20 the Department proceeded under TELRIC rate-setting principles although the TELRIC methodology was under review from the U.S. Supreme Court. Moreover, Verizon's arguments that the Department is without authority to establish its own unbundling requirements above and beyond those established by the Federal Government are completely without merit. *See AT&T's Initial Comments* at 8-10.

Verizon's argument that the Department should await the resolution of all regulatory legal uncertainty, if accepted, would cripple the Department's ability to take action. Verizon and the other RBOCs have pursued a deliberate strategy of attempting to foment regulatory uncertainty by refusing to recognize and instead challenging the mandates of the 1996 Act and of the FCC's implementing regulations. Verizon cannot thereby divest the Department of the power to Act. Acceptance of Verizon's attempt to delay investigation of its NGDLC plans will do nothing more than allow Verizon to move forward with its plans in a manner that will allow it to hinder the development of local exchange competition. The Department must conduct an investigation now, in order to ensure that this does not happen.

II. THIS CASE DOES NOT IMPLICATE PACKET SWITCHING, AND VERIZON'S ASSERTION TO THE CONTRARY ONLY DEMONSTRATES THE NEED FOR FURTHER EVIDENTIARY PROCEEDINGS TO RESOLVE THE DISPUTE

As AT&T noted in its Initial Comments, we believe that the evidence will show that Verizon's rollout of NGDLC using ATM technology will not involve packet switching, even as

defined in current FCC regulations. *See AT&T's Initial Comments* at 10-12. Verizon disagrees. But the Department cannot resolve this issue without allowing discovery, hearing evidence, and considering argument regarding Verizon's proposed NGDLC architecture. The disagreement among the parties on this point underscores why further investigation is needed, and in no way supports Verizon's plea that the Department sit back and do nothing while Verizon continues to dominate the residential local exchange market.

Even if the Department were to determine that packet switching is somehow implicated in Verizon's new network architecture, further proceedings would be necessary. At the very least, the Department would need to investigate whether the four conditions set forth in 47 C.F.R. § 51.319(c)(5) are met because unbundling of packet switching is required if these conditions are met. *See Initial Brief of AT&T* in DTE 98-57-III, at 5-6 (Dec. 18, 2001); *Reply Comments of AT&T* in DTE 98-57-III, at 4-10 (Apr. 25, 2002). Once again, the parties disagree on this point. Verizon's unilateral position is not reason for inaction but, to the contrary, reason for the Department to proceed with this reopened investigation.

III. THE DEPARTMENT SHOULD NOT REVERSE COURSE, BUT SHOULD ALLOW FURTHER DISCOVERY AND EVIDENCE AS PREVIOUSLY ANNOUNCED.

The Department has already reopened this investigation to provide for further discovery, evidence, and hearings regarding the implications of Verizon's newly announced NGDLC plans, by Hearing Officer order dated May 24, 2002. Verizon did not seek reconsideration of that order.

Now, however, Verizon asserts that if the Department proceeds with its investigation it "should not take any further evidence or briefs." *See Verizon Initial Comments* at 6. This assertion ignores the important fact that Verizon's new NGDLC plans were not previously explored. The Department properly reopened this investigation to accept new evidence. Verizon

is attempting to render further investigation meaningless by denying the Department the information and argument it needs to make a reasoned decision.

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